IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. CIVIL FIRST APPEAL NO.33/1999

Santokh Singh @ Santosh Singh
S/o late Shri Thakar Singh
...defendant-appellant
Versus
Punjab National Bank through Manager,
Branch Baroda Mev, District Alwar
...plaintiff-respondent
AND
Smt. Daljeet Kaur W/o late Shri Satvendra Singh & Others
...defendant-proforma-respondents

Date of Judgment ::: 9th July, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri Tripurari Sharma with
Shri Samay Singh, Counsel for appellant
Shri M.A. Khan, Counsel for plaintiff-respondent-Bank
Shri Vipul Jaiman, Advocate, for
Shri S.S. Sunda, Counsel for defendant-proforma-respondents
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By the Court:-

This regular appeal under Section 96 of the Code of Civil Procedure is directed against the impugned judgment and decree dated 6th November, 1998, passed by the Additional District Judge, Rajgarh, in Civil Suit No.30/1994, whereby he decreed the suit of the plaintiff-respondent-Bank for a sum of Rs.59,337/-, with interest thereon at the rate of 14.5% per annum.

Brief facts giving rise to this appeal are that late Shri Satvendra Singh, husband of defendant-proforma-

respondents No.2 and father of defendant-proforma-respondents No.3 to 5, applied for a term loan of Rs.89,000/- to purchase Mahindra Jeep, with the plaintiff-bank. The amount of loan was sanctioned and the same was availed. Late Shri Thakar Singh, father of appellant, stood surety of Satvendra Singh. The surety Thakar Singh mortgaged his house against said loan amount. Shri Satvendra Singh became defaulter and, in these circumstances, the plaintiff-respondent-Bank filed a suit for recovery of due amount i.e. Rs.59,337/- in the lower court against the defendants no.1 to 4 (legal representatives of Satvendra Singh) and defendant no.5 Santokh Singh @ Santosh Singh S/o Thakar Singh.

The suit was contested by the defendants. A joint written-statement was filed on behalf of defendants no.1 to 4, whereas separate written-statement was filed by defendant no.5.

On the basis of pleadings of the parties, the learned trial court framed six issues, which are reproduced in Para No.3 of the impugned judgment. Issue No.4 was relating to limitation as to whether the suit is barred by limitation, or not. The issue no.5 was as to whether the amount due of loan can be recovered by selling the property mortgaged by surety late Shri Thakar Singh with the plaintiff-bank.

In support of the case, the plaintiff-bank examined PW-1 Vimal Chand Jain, PW-2 Prakash Chand Soni, PW-3 Bijendra Singh and PW-4 Krishna Baldeo, and produced documentary evidence Exhibit-1 to Exhibit-51. In defence, the statements of DW-1 Santokh Singh and DW-2 Daljeet Kaur were recorded.

The learned trial court, after considering the evidence on the record decided all the issues in favour of plaintiff-bank and consequently decreed the suit. The trial court although recorded a finding that the suit has been filed within a period of limitation, but, while granting relief under Issue No.6, observed that the plaintiff-bank will be entitled to sell the house mortgaged by surety against the loan amount.

In these circumstances, being aggrieved with the impugned judgment and decree, the present appellant Santokh Singh @ Santosh Singh S/o Thakar Singh, who stood surety in favour of Satvendra Singh, has preferred this appeal.

The learned counsel for the appellant contended that the learned trial court has committed an illegality in passing a decree to the effect that the loan amount can be recovered by selling the property mortgaged by surety Thakar Singh. He contended that when Issue No.4 has been decided in favour of the plaintiff and a finding has been recorded that the suit was filed within the period of

limitation then it was within limitation against all the defendants and the suit was rightly decreed against all the defendants. He further contended that the loan amount should have been ordered to be recovered first from the sons of borrower Satvendra Singh and in case the amount could not have been recovered from them then only the due amount could have been recovered from the surety by selling the property mortgaged by surety with the plaintiff-bank, therefore trial court committed an error in passing the impugned judgment directing to recover the amount by selling the mortgaged property only. He, therefore, contended that the impugned judgment and decree is contrary to the provisions of law and the same is liable to be set aside.

The learned counsel for the respondent-bank contended that the surety is equally liable for making the payment of loan due against Satvendra Singh and there is nothing wrong on the part of the lower court in case impugned judgment is passed directing sale of the property mortgaged by surety with the plaintiff-bank to recover the amount of loan due against Satvendra Singh.

He further contended that in case the amount of loan is recovered by selling the property belonging to Thakar Singh or his son Santokh Singh @ Santosh Singh then he is at liberty to recover the said amount from the original

borrower i.e. Satvendra Singh or his legal representatives, therefore, he contended that there is no force in the submission of learned counsel for the appellant and the appeal is liable to be dismissed.

I have considered the submissions of learned counsel for the parties and minutely scanned the impugned judgment as well as the record of the trial court.

There is no dispute so far as facts of the case are concerned. The original borrower Satvendra Singh took loan of Rs.89,000/- from the plaintiff-bank to purchase Mahindra Jeep and Thakar Singh stood surety for him. The surety also mortgaged his house with the plaintiff-bank. Exhibit-6 is the agreement of guarantee; Exhibit-7 is the letter of guarantee; Exhibit-13 is the letter by which Thakar Singh mortgaged the title-deed of his house against the loan amount; Exhibit-46 is the application of the surety and Exhibit-28 is the affidavit of surety. The learned trial court has considered the plaintiff's as well as defendant's evidence in detail while considering the Issues No.3 and 5. There is no dispute that Thakar Singh mortgaged his house and executed all necessary documents. The plaintiff-bank is at liberty to recover the amount of loan from original borrower as well as from surety. The borrower is liable to make the payment of loan amount but the plaintiff-bank can recover the amount of loan from original borrower as well

as surety both. The plaintiff-bank is also entitled to recover the amount of loan by selling the property mortgaged with the plaintiff-bank against due amount of loan.

I have considered the finding of the trial court in respect of Issues No.1 to 5, and I do not find any illegality in the finding of the learned trial court. The learned counsel for the appellant could not point out any illegality or perversity so as to interfere in the finding of the trial court. I have considered the oral as well as documentary evidence of both the parties and I do not find any illegality or perversity in the finding of the trial court.

From the evidence on the record it is clear that the loan was taken by Satvendra Singh and Thakar Singh stood surety for the loan amount. The house was mortgaged against loan amount. A sum of Rs.59,337/- was due as per the bank statement which has not been disputed by defendants. The question of limitation has also been considered in detail and the finding of the said issue has not been challenged by learned counsel for the appellant also.

In these circumstances, I do not find any illegality in the impugned judgment.

In view of the above discussion and reasons, I do not find any force in any of the contention of the learned

counsel for the appellant and the appeal, being devoid of any merit, is liable to be dismissed and the same is hereby dismissed with no order as to costs.

(Narendra Kumar Jain) J.

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